

REMARKS

This paper is submitted in reply to the final Office Action dated May 18, 2005, within the three-month period for response. Claims 1-3, 6-8, 11, 14-15, 17, 19-20, 22-27, 31, 33, 35-36, 38, 41-43, 45, 47-59 are pending, with claims 4-5, 10, 12-13, 16 18, 21, 29, 32 being withdrawn. Reconsideration and allowance of all pending claims by the Examiner are respectfully requested.

In the Office Action, claims 1-3, 6-8, 11, 14-15, 19, 22-27, 31, 33, 35-36, 38, 41-43, 47 and 49-56 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,133,354 to Kallok (Kallok). Furthermore, claims 20, 48 and 58-59 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kallok, and claims 17 and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kallok in view of U.S. Patent No. 5, 193,539 to Schulman et al. (Schulman).

Applicant appreciates the Examiner's acknowledging the allowable subject matter in objected-to claims 9 and 39. Moreover, Applicant wishes to thank the Examiner for the courtesy extended in the personal interview between the Examiner and Applicant's representative on June 8, 2005. In the interview, it was discussed that the unit designation, "microseconds," used in claims 9 and 39 was inadvertently mislabeled. As supported in the specification on page 18 at line 7, the proper unit of measurement should have been milliseconds (or thousands of microseconds). Independent claims 1, 31 and 58 have consequently been amended to reflect the corrected range, as well as to put all of the claims in condition for allowance. To this end, claims 9, 39 and 57 have been canceled.

As noted during the interview, the corrected range is still on an order of ten times too fast with respect to the frequencies employed by Kallok to be obvious in view of prior art. As acknowledged in the Office Action, Kallok teaches in column 2, lines 1-10 to apply pulses at a frequency that is too slow to allow a fused tetanus contraction. Kallok quantifies precisely at column 3, lines 23-28 this frequency that results in a tetanus contraction. That is, Kallok teaches that pulses spaced by less than ten milliseconds will result in an undesired tetanus response ($1 \text{ second divided by the } 100 \text{ pulses/second} = 0.01 \text{ seconds}$, or 10 milliseconds, not accounting for pulse width which will only further lower

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the ceiling frequency). There is no higher frequency suggested in the reference, because Kallok is focused on avoiding any such frequencies (column 4, lines 53-54).


The corrected range as amended into each currently pending independent claim consequently still patentably distinguishes the present claims from the prior art. Kallok does not teach or suggest pulses spaced as quickly as around 3,500-7,000 microseconds. In fact, Kallok actually teaches away from using pulse separation in the claimed frequency range, and could not properly be combined with any other hypothetical reference having such quick spacing between pulses (of a resonant sequence).

Applicant therefore submits that all pending claims are patentable over the prior art of record, and reconsideration and allowance of all pending claims are accordingly requested. Applicant respectfully traverses the Examiner's rejections to the extent that they may be maintained, and Applicant respectfully submits that no new matter is being added by the above amendments, as the amendments are fully supported in the specification, drawings and claims as originally filed.

If the Examiner has any questions regarding the foregoing or which might otherwise further the case onto allowance, the Examiner is strongly encouraged to contact the undersigned at (513) 241-2324. Moreover, if there are any charges or credits that are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,

6/14/05
Date


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